

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #03	CCRB Case #: 202000990	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/30/2020 1:50 PM, Friday, 12/18/2020 12:00 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 3/16/2022	Precinct: 71		
Date/Time CV Reported Wed, 02/05/2020 7:52 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 02/05/2020 7:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. SGT Fitzroy Vigilance	04583	918667	071 PCT
3. POM Sandy Peralta	12833	943664	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Yevhen Bizhko	01350	964394	071 PCT
2. POM Keith Reusch	18777	959125	071 PCT
3. POM Christian Mele	29333	965331	071 PCT
4. POM Ian Gullo	28318	945793	071 PCT
5. POM Pablo Rivera	15886	918227	071 PCT
6. POM Omar Delarosa	06614	964474	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Fitzroy Vigilance	Force: Sergeant Fitzroy Vigilance used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B . An officer	Abuse: An officer threatened to arrest § 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)	§ 87(2)(g), § 87(4-b)
E . POM Sandy Peralta	Untruthful Stmt.: On December 18, 2020, PO Sandy Peralta provided a false official statement to the CCRB.	§ 87(2)(g), § 87(4-b)

## Case Summary

On February 5, 2020, § 87(2)(b) filed this complaint via the CCRB online complaint form.

On January 30, 2020, at approximately 1:50 P.M., Sgt. Fitzroy Vigilance, PO Sandy Peralta, PO Yevhen Bizhko, PO Omar Delarosa, PO Keith Reusch, PO Christian Mele, PO Ian Gullo, and PO Pablo Rivera, all assigned to the 71<sup>st</sup> Precinct, responded to a 911 call regarding an assault at § 87(2)(b) residence, § 87(2)(b) in Brooklyn. § 87(2)(b) had called 911 to report that his subtenant § 87(2)(b) had violently attacked him. § 87(2)(b) wife § 87(2)(b) had also called 911 to report that she feared § 87(2)(b) was going to “put his hands on” her husband. After speaking with § 87(2)(b) and § 87(2)(b) inside the apartment, Sgt. Vigilance stepped into the hallway to speak with § 87(2)(b). During that conversation, § 87(2)(b) attempted to reenter his apartment, and Sgt. Vigilance allegedly pushed him more than once on his chest (**Allegation A: Force:** § 87(2)(g)). At the same time, an unidentified male officer allegedly made a hand signal in which he held his fingers around his wrist in the shape of a handcuff (**Allegation B: Abuse of Authority:** § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)  
§ 87(2)(g), § 87(4-b)  
§ 87(2)(g), § 87(4-b)  
On December 18, 2020, at approximately 10:00 A.M., at 100 Church Street in Manhattan, PO Peralta made a False Official Statement during his CCRB interview (**Allegation E: Untruthful Statement:** § 87(2)(g)).

No arrests were made, and no summonses were issued in relation to this incident.

The investigation obtained BWC footage from PO Peralta, PO Bizhko, PO Delarosa, PO Reusch, PO Mele, PO Gullo, and PO Rivera (**01-07 Board Review**). Additionally, § 87(2)(b) provided the investigation with five cell phone videos (**08-12 Board Review**).

## Findings and Recommendations

### **Allegation (A) Force: Sergeant Fitzroy Vigilance used physical force against § 87(2)(b)**

It is undisputed that officers from the 71<sup>st</sup> Precinct arrived at § 87(2)(b) apartment in response to 911 calls regarding an assault in progress. Further undisputed is that Sgt. Vigilance spoke with § 87(2)(b) and § 87(2)(b) at which time they stated that § 87(2)(b) had been harassing them by standing extremely close to them, putting his face up against theirs, and asking them to sign a legal document. At the end of that conversation, Sgt. Vigilance asked § 87(2)(b) to step into the hallway to speak with him, at which time, he told § 87(2)(b) not to harass his subtenants but to take them to landlord-tenant court if he wished to take action against them. Also undisputed is that after Sgt. Vigilance told him this, § 87(2)(b) attempted to reenter his apartment. Under dispute is whether Sgt. Vigilance pushed § 87(2)(b) when he attempted to reenter his apartment.

During his CCRB interview (**13 Board Review**), § 87(2)(b) alleged that when he attempted to enter his apartment, Sgt. Vigilance stepped in front of him and pushed him more than once on his chest. The investigation retrieved two numbers for § 87(2)(b) and § 87(2)(b) and attempted to contact them but was unable to reach them (**23 Board Review**). In his testimony to the CCRB (**14 Board Review**), Sgt. Vigilance stated that he did not push § 87(2)(b).

Beginning at 1:06 minutes in § 87(2)(b) cell phone video attached to IA 57 (**10 Board Review**),

§ 87(2)(b) walks toward Sgt. Vigilance, who is standing in front of his apartment door. Sgt. Vigilance, whose hands are not visible, states, “Sir, sir, I’m not done with you.” § 87(2)(b) then states, “Do not hit me,” and moves several steps backward, while the camera pans down to show Sgt. Vigilance’s left hand extended toward § 87(2)(b). Sgt. Vigilance then states, “Nobody’s hitting you.” PO Rivera’s BWC attached to IA 149 (**07 Board Review**) captures the same interaction beginning at 3:13 minutes; however, Sgt. Vigilance’s hands are not visible in this footage either.

After watching § 87(2)(b) cell phone video showing the interaction, Sgt. Vigilance stated that § 87(2)(b) walked very close to him in a way that seemed like he was trying to barge through him so he put his hand up to express that § 87(2)(b) should not push past or walk through people. Sgt. Vigilance maintained that he did not recall making physical contact with § 87(2)(b). In their CCRB interviews (**15-16 Board Review**), PO Rivera and PO Peralta, both of whom were present during the interaction, stated that they did not see Sgt. Vigilance push § 87(2)(b).

Requests for a Threat Resistance and Injury Worksheet for § 87(2)(b) and § 87(2)(b) had negative results (**24 Board Review**).

§ 87(2)(g)  
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**Allegation (B) Abuse of Authority: An officer threatened to arrest § 87(2)(b).**

In his verified statement to the CCRB (**13 Board Review**), § 87(2)(b) stated that when Sgt. Vigilance allegedly pushed him, another officer held his fingers around his wrist in the shape of a handcuff. § 87(2)(b) stated that this officer was male but was unable to provide any further description of him. During their CCRB interviews (**14-16 Board Review**), Sgt. Vigilance, PO Rivera, and PO Peralta all stated that they did not recall making such a hand signal and did not see any other officer do so.

§ 87(2)(b) cell phone video footage attached to IA 57 (**10 Board Review**), as well as BWC footage from PO Peralta attached to IA 148, PO Mele attached to IA 150, and PO Rivera attached to IA 149 (**01, 05, 07 Board Review**), show that the only individuals present in the hallway at the time of the alleged push were § 87(2)(b), Sgt. Vigilance, PO Mele, PO Rivera, and PO Peralta. Each video shows the interaction from the time § 87(2)(b) exits his apartment until the time he reenters it. At 1:08 minutes in § 87(2)(b) cell phone video, as the alleged push occurs, PO Peralta’s left hand is rested upon the doorjamb and PO Rivera’s hands are at his sides, making clear that neither made the signal that § 87(2)(b) described. At 6:40 minutes in PO Mele’s BWC, as the alleged push occurs, § 87(2)(b) back is turned to PO Mele. When § 87(2)(b) turns around seconds later, PO Mele’s right hand is raised and lightly touching § 87(2)(b) back, making clear that he did not make the signal that § 87(2)(b) described.

Since video evidence shows the hands of all officers who were present at the time of the alleged hand gesture and does not depict any officer making the hand signal that § 87(2)(b) described, § 87(2)(b)

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§ 87(2)(g), § 87(4-b)  
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§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

**Allegation (E) Untruthful Statement: Police Officer Sandy Peralta provided a false official statement to the CCRB.**

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

On December 18, 2020, in his testimony to the CCRB (**16 Board Review**), PO Peralta noted that he had watched his BWC an hour prior to the interview. Beginning at 19:40 minutes in his interview, PO Peralta stated that he had not deliberately covered his BWC with his hand but that the video “went dark” accidentally when he got close to Sgt. Vigilance to tell him something that he did not want § 87(2)(b) to hear. The investigation then asked if he purposely put his hand in front of his body camera. PO Peralta responded, “No, no. No. It was when I got closer to the supervisor to tell him to come over because I didn’t want § 87(2)(b) to hear because I didn’t know how he was going to react [...] So, I guess when we got close to each other, it must have blocked it off accidentally.” When the

investigation asked PO Peralta if there were any situations or discussions in which he is supposed to turn off his BWC, he answered, “Once it’s rolling, we pretty much let it roll.” He then added, “Either sound or video. Either – sometimes you get sound, sometimes you get – either one.” PO Peralta’s counsel then noted, “Basically, you never turned it off. The volume was on.” PO Peralta then stated, “The volume was on. So, he could hear what we were talking about. Just that I was pulling in close. The fact that when you’re that close, it got obstructed, but the conversation was still audible.”

As he watched the part of his BWC footage in which his hand moves near camera lens during the interview, PO Peralta stated, “Yeah, that’s when I was telling the sergeant to come over. That’s probably when I got close to him. I might have been like – come over.” After playing him the full clip from the 1:20 to the 1:49 minute mark, the investigation again asked PO Peralta if he had purposely placed his hand over his BWC. PO Peralta responded that he had not and reiterated that the video was accidentally obscured due to his proximity to Sgt. Vigilance. In his CCRB testimony (**14 Board Review**), Sgt. Vigilance stated that he did not know why PO Peralta covered his BWC during the conversation and was not aware at the time that he was doing so.

§ 87(2)(g), § 87(4-b)

NYPD Patrol Guide Procedure 203-08 (**18 Board Review**) defines a false statement as an “intentional statement that a member of the service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made.” The procedure further clarifies that a material fact is a “significant fact that a reasonable person would recognize as relevant to, of affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct” in which “the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome.”

While PO Peralta argues that his lens was covered accidentally due to his proximity to Sgt. Vigilance, video evidence from his BWC contradicts this. During the 29 seconds of PO Peralta’s BWC footage that he watched during his CCRB interview, the video goes black twice, once for approximately one second, and again for 14 seconds. Both times, the black screen is immediately preceded by views of PO Peralta’s hand moving toward the lens and immediately followed by views of his hand moving away from the lens. Additionally, the second time, as his hand moves away from the screen, Sgt. Vigilance is already standing at least one to two feet away from him, not close enough to have been blocking PO Peralta’s BWC screen a moment earlier.

Based on the parts of the conversation audible in PO Peralta’s BWC regarding something he “printed out earlier” involving something that was sent to the FBI, it is probable that he covered his lens to have a private conversation with Sgt. Vigilance. However, as noted above, the patrol guide requires officers who respond to incidents requiring BWC activation to continue recording until all police action has concluded. The procedure does not make any exceptions to this rule for private conversations between officers and supervisors or otherwise. PO Peralta acknowledged this during his interview when he stated, “Once it’s rolling, we pretty much let it roll.” Additionally, although PO Peralta and his counsel argued that the BWC was not off because it was recording sound, the patrol guide does not make any exceptions to the abovementioned rule that would allow for audio-only recordings.

As discussed above, approximately an hour prior to his CCRB interview, PO Peralta reviewed his BWC footage, which shows his hand moving in front of his video lens, obscuring the footage for 14

seconds. When questioned as to whether he interfered with his BWC, PO Peralta immediately referred to the relevant portion of the recording, showing that he had noticed the action and considered it prior to the interview. Nevertheless, despite video evidence to the contrary, PO Peralta testified that he had not placed his hand in front of his lens, and that it was his proximity to Sgt. Vigilance that caused the interference in the video footage. Further, after watching the relevant footage from the 1:20 to the 1:49 minute mark during his interview, PO Peralta maintained that the footage was obscured accidentally and that he did not deliberately place his hand over the lens.

As noted above, the investigation has determined that PO Peralta's BWC shows his hand moving to cover his camera. Despite watching this footage an hour prior to and again during his CCRB interview, PO Peralta denied deliberately interfering with his BWC and instead asserted in the face of evidence to the contrary that the lens was accidentally obscured. This testimony was material insofar as it altered the facts regarding his interference with his BWC and would, if believed, allow PO Peralta to avoid any consequences from that action. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- Sgt. Vigilance has been a member of service for 23 years and has been a subject in 29 complaints and 60 allegations, of which one was substantiated:
  - 201808957 involved a substantiated allegation of abuse of authority. The Board recommended Command Discipline A and the NYPD imposed the recommended discipline. § 87(2)(g)
- PO Peralta has been a member of service for 14 years and has been a subject in four complaints and five allegations, none of which were substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On January 26, 2021, the New York City Office of the Comptroller confirmed that § 87(2)(b) did not file a Notice of Claim regarding this incident (**21 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.: 3

Investigator: Rachel Adler      Investigator Rachel Adler      1/27/2021  
Signature      Print Title & Name      Date

Squad Leader: Olga Golub      SL Olga Golub      12/09/2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date